

AG Contract No.: KR03-0524TRN
ADOT ECS File No.: JPA 02-137
Project No. STP 202-C(001)B
Section: Santan Freeway (SR 202L)
Gilbert Road Waterline
TRACS No.: H5381 01C & 01D
BUDGET SOURCE ITEM # - Town Funds

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF GILBERT

THIS AGREEMENT is entered into, 18th March 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF GILBERT, acting by and through its TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes, Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes, Section 48-572 to enter into this agreement and has by action of the Town Council, a copy of which is attached hereto and made a part hereof, approved this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The Town desires the State to design and construct a 12" waterline with a 24" sleeve across the Santan Freeway, (SR 202L) at Gilbert Road, at an estimated cost of \$176,827.00. The State agrees it is in the best interest of the parties for the State to incorporate the Town's requested work into the it's existing construction of SR 202L, and is willing to design and construct such improvements under the terms and conditions of this agreement, hereinafter collectively referred to as the "Project".

4. It is understood that the State is acting as a third party on behalf of the Town, administering design and construction of the Town's waterline facility. At no time is the State to be considered the owner of, operator of, or locator for, the Town's waterline facilities.

5. The parties hereto agree to and acknowledge the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement; 4) Any changes to the related items listed on Exhibit A, will only occur with the mutual agreement of the Town and the State.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 26723
Filed with the Secretary of State
Date Filed: 03/18/04

Janice K. Brewer
Secretary of State

By: Tim D. Greenwald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement and within 30 days, invoice the Town for \$176,827.00 for the Town's estimated costs of the Project, as shown on Exhibit A, attached hereto and made a part hereof.

b. On behalf of the Town, prepare design plans, specifications and other documents ("Contract Documents") and provide services required for construction bidding and construction of the Project across SR 202L at Gilbert Road in accordance with Town standards. State will incorporate the Town's review comments as appropriate. State will design the Project within the construction budget of \$176,827.00 and in accordance with good engineering practices and the engineering standards of the Arizona Department of Transportation.

c. Call for bids, award and enter into one or more construction contract(s) for the Project, administer same and make all payments to the contractor. Serve as Construction Manager for the Project, including but not limited to: providing inspections and oversight to assure construction is in accordance with the Contract Documents; making all progress payments to the construction contractor(s); monitoring the construction schedule, reviewing and approving submittals; reviewing and approving change order requests; determining final completion; and making final payment to the construction contract, upon a determination that the improvements have been constructed in accordance with the Contract Documents. State shall not make payments to the construction contractor(s) for incomplete or defective work.

d. If the cost of the Project is less than the amount paid by Town pursuant to Paragraph II.2b, reimburse the Town for all amounts not expended.

e. Upon completion of the Project, provide the Town with a recapitulation of the Project costs, along with an invoice or reimbursement, for the difference between the estimated amount paid by the Town and the actual costs for the Project except to the extent the State is responsible for extra costs pursuant to Paragraph II.1e. The Project costs include a fixed rate of 5% for design engineering administration; a fixed rate of 14% for construction engineering and administration; a fixed rate of 1.5% for maintenance of traffic; a fixed rate of 1% for construction survey and layout; a fixed rate of 1% for contraction quality control; and a fixed rate of 10% for mobilization.

2. The Town will:

a. Upon execution of this agreement and within 30 days of receipt of an invoice from the State, reimburse the State in an amount estimated at \$176,827.00 for the cost of the Project, as shown on Exhibit A.

b. Review the design documents and provide comments and approve the final design provided however that any such review and approval shall not diminish the obligation of the State to design the Improvements as set forth in Paragraph II.1a.

c. Be responsible for the cost of the Project, in an amount currently estimated at \$176,827.00, and for its proportionate share of any cost increases, and for any contractor claims for extra compensation due to delays or whatever reason attributable to the Town.

d. In the event the actual costs of the Project exceed the estimated costs paid by the Town, reimburse the State within 30 days after receipt of an invoice.

e. Upon completion of the Project in accordance with this Agreement and the specifications and contract documents, and acceptance of the Project by the Town, resume maintenance and pay for all costs to maintain the waterline.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect for perpetuity. Further, this agreement may be terminated by the State at any time upon 60 days written notice. It is understood and agreed that in the event this agreement is terminated by the State, the State shall in no way be obligated to maintain said Project. In the event State terminates this contract, State shall refund to Town all amounts paid by Town pursuant to Paragraph II.2.c.

2. It is understood and agreed that, in the event the Town terminates this agreement, the State shall in no way be obligated to maintain the Project. In addition, the Town will be responsible for all costs associated with the Project, up to the time of cancellation, if cancelled by the Town.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes, Section 38-511.

5. The provisions of Arizona Revised Statutes, Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to the agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes, Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, Arizona 85007
FAX (602-712-7424)

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296-3401

10. In accordance with Arizona Revised Statutes, Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

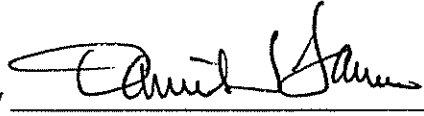
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF GILBERT

By 
STEVE BERMAN
Mayor

STATE OF ARIZONA

Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By 
CATHY TEMPLETON
Town Clerk

EXHIBIT "A"
SUMMARY OF IGA COSTS

SANTAN FREEWAY (ARIZONA AVENUE TO GILBERT ROAD)
DESCRIPTION AND COST OF PAY ITEMS FOR THE TOWN OF GILBERT ENHANCEMENTS

ITEM	DESCRIPTION	COST	
		DESIGN	CONSTRUCTION
1	12" WATERLINE IN GILBERT ROAD	15,750.00	161,077.00
	New 12" waterline with 24" sleeve on east side of Gilbert Road across the Santan Freeway.	176,827.00	
Item 1 Sub-Total:		15,750.00	161,077.00
TOTAL:		15,750.00	161,077.00
			176,827.00

EXHIBIT "A"
ITEM 1 IGA COST BACKUP

Contractor Bid Version
JPA 02-137
November 21, 2003

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 1 - 12" WATERLINE IN GILBERT ROAD				
2					
3					
4	8080539 PIPE (BLACK STEEL) (24")	L.FT.	565	\$75.00	\$42,375.00
5	8081010 WATER MAIN (12") (TOG) (GILBERT ROAD)	L. FT.	1,493	\$55.00	\$82,115.00
6					
7	SUBTOTAL CONSTRUCTION COST (ITEM 1)				\$124,490.00
8					
9	MAINTENANCE OF TRAFFIC SHARE ¹	L.SUM	1	1.50%	\$1,867.00
10	CONSTRUCTION SURVEYING AND LAYOUT SHARE ²	L.SUM	1	1.00%	\$1,245.00
11	CONTRACTOR QUALITY CONTROL SHARE ³	L.SUM	1	1.00%	\$1,245.00
12	MOBILIZATION SHARE ⁴	L.SUM	1	10.00%	\$12,449.00
13	SUBTOTAL CONSTRUCTION COST (ITEM 1)				\$141,296.00
14					
15	14% CONSTRUCTION ENGINEERING AND ADMINISTRATION ⁵			14.00%	\$19,781.00
16	DESIGN ENGINEERING				\$15,000.00
17	5% ENGINEERING ADMINISTRATION ⁶			5.00%	\$750.00
18					
19	ITEM 1 TOTAL COST				\$176,827.00

Notes:

1. Maintenance of Traffic was calculated on a percentage basis (1.5% fixed) of the construction cost of the Town's items.
2. Construction Surveying and Layout was calculated on a percentage basis (1.0% fixed) of the construction cost of the Town's items.
3. Contractor Quality Control was calculated on a percentage basis (1.0% fixed) of the construction cost of the Town's items.
4. Mobilization was calculated on a percentage basis (10.0% fixed) of the construction cost of the Town's items.
5. Construction Engineering and Administration is calculated at 14 percent of the construction cost.
6. Engineering Administration is calculated at 5 percent of the Town design cost.

Water Ranch Lake for FY 2003-2004 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

9. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the Arizona Department of Transportation for the installation of a 12-inch water line under the Santan Freeway at Gilbert Road and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

10. CHANGE ORDER - consider approval of Change Order No. 2 with SDB, Inc. in an amount not to exceed \$29,821.07 for the West Santan Sanitary Sewer Lift Station Project.

This item was approved with the Consent Calendar.

11. CHANGE ORDER – consider approval of Change Order No. 1 with Carollo Engineers in an amount not to exceed \$70,806 for a total contract amount of \$152,873 for engineering services for the Recharge Capacity Increase Projects WW020 and WW030.

This item was approved with the Consent Calendar.

12. CHANGE ORDER – consider approval of Change Order No. 2 with Watson Furniture adding 36 days to contract completion for the Public Safety Complex Dispatch furniture.

This item was approved with the Consent Calendar.

13. REQUEST TO BID – consider authorizing advertisement and acceptance of bids for the Fiesta Tech Waterline Improvements.

This item was approved with the Consent Calendar.

14. REQUEST TO BID – consider authorizing advertisement and acceptance of bids for construction of Lindsay Road between Ray and Williams Field Roads, Project ST005.

This item was approved with the Consent Calendar.

15. REQUEST FOR QUALIFICATIONS – consider authorizing advertisement and acceptance of qualifications for Project Construction Management for Williams Field Road between Gilbert Road and Eastern Canal, Project ST049.

Mayor Berman administered an Oath of Office to Burnie Hibbard and Michael Holland for the Gilbert Educational Cable Access Governing Board.

2. Recognition of Wendy Nance for service on the Gilbert Educational Access Governing Board.

Mayor Berman recognized Wendy Nance for service on the Gilbert Educational Access Governing Board.

3. Proclamation declaring February 21 through 28, 2004 as *FFA Week*.

Mayor Berman read a proclamation declaring February 21 through 28, 2004 as *FFA Week* and presented the proclamation to representatives of local high schools.

4. Proclamation declaring February 22 through 28, 2004 as *National Engineers Week*.

Mayor Berman read a proclamation declaring February 22 through 28, 2004 as *National Engineers Week*.

5. Presentation of Student Citizen of the Month Awards

Mayor Berman and Councilmember Presmyk presented Student Citizen of the Month awards for January 2004:

Lindsay Ivins, Kyrissa Boyer, Seth Weakly, Stephanie Efnor, Jacob Blough, Quentin Remley, Brandi Duarte, Eiko Diaz, Khara Hills, Laura Ludwig, James Walker, Tiana Blas, Juliette Brown, Athens Graves, Dylan Beruman, Belinda Wilson, Sean DeRosa, Austin Pedro, Meghan Becker, Nick Curtis, Bayna Widgeon, Alyssa McKillip, Kristine Schwartz, Carter Andersen, Brianna Lopez, Hannah Zibell, Brandon Buck, Logan Winter, Devon Kirschmann, Kayla McKinley, Kelley Muro, Gabrielle Frazier, Michael Waite, Haley Frazier, Megan Kirschner, Chloe Flitton, Divya Amrelia, Sean Gatenby, and Michael Cleland.

COMMUNICATIONS FROM CITIZENS

None.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Morrison, seconded by Councilmember Presmyk, to approve Consent Items 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17A, 18, 19, 20, 21, 22, 23, 24, 25, and 26 and remove Items 12 and 17 from the Consent Calendar. *Motion carried 7-0.*

6. INTERGOVERNMENTAL AGREEMENT – consider:

- a. Rescinding the Council Action of September 16, 2003 approving an Intergovernmental Agreement with the Arizona Department of Transportation in an amount not to exceed \$318,589 for the installation of Water Utilities in Gilbert Road under the Santan Freeway; and
- b. Approve a new Intergovernmental Agreement with the Arizona Department of Transportation in an amount not to exceed \$176,827 for construction of a 12-inch water line under the Santan Freeway and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

7. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the City of Chandler regarding annexation of Gilbert Road between Galveston and Williams Field Roads and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

8. INTERGOVERNMENTAL AGREEMENT – consider approval of the renewal of an Intergovernmental Agreement with the City of Chandler for Police Communication Services and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

9. INTERGOVERNMENTAL AGREEMENT – consider approval of the Intergovernmental Agreement with the City of Chandler for an Identification Specialist for evidence collection at major crime scenes – Blood Alcohol Testing and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

10. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the City of Mesa for installation of a 66-inch sewer in Germann Road and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

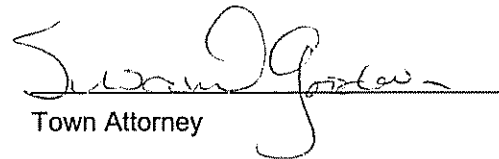
11. CONTRACT – consider approval of an Engineering Services Contract with Carollo Engineers in an amount not to exceed \$42,212 for a Concept Development Study for the 3 MG Reclaimed Water Reservoir and Booster Pump Station and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

APPROVAL OF THE TOWN OF GILBERT ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF GILBERT, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 2 day of March, 2004


Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0524TRN (**JPA 02-137**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 15, 2004.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/mjf
Attachment
834519